



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2005

Ms. Lisa M. Salinas
Custodian of Records
City of Baytown
3200 North Main Street
Baytown, Texas 77521

OR2005-03629

Dear Ms. Salinas:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223997.

The Baytown Police Department (the "department") received a request for a "complaint about [a] pig in city limits." You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the informer's privilege. The informer's privilege protects the identities of individuals who report violations of law to police, other law enforcement agencies, and certain administrative officials. *See* Open Records Decision No. 279 (1981). For information to come under the protection of the informer's privilege, it must relate to a violation of a criminal or civil statute. *See* Open Records Decision Nos. 515 (1988), 391 (1983). The informer's privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 (1990). Once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. *See* Open Records Decision No. 202 (1978).

You state that the complainant reported a violation of a city ordinance, section 14-8(a)(1), which is punishable "as provided in section 1-14" of the city code. Thus, we understand you to indicate that such a violation is punishable by civil or criminal penalties. *See* Open

Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). You indicate that the complaint was made to the department. Therefore, we agree that the information you have highlighted in green may be withheld under section 552.101 in conjunction with the informer's privilege. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 223997

Enc. Submitted documents

c: Mr. Harvey Ponder
115 Lazy Lane
Baytown, Texas 77520
(w/o enclosures)